

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
SAN JUAN POOLS, INCORPORATED,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondents.

PCHB No. 85-241

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

THIS MATTER, the appeal of a civil penalty of \$500 for non-payment of air contaminant source registration fees came on for hearing in Seattle, Washington, on March 10, 1986, before the Pollution Control Hearings Board; Wick Dufford (presiding), Gayle Rothrock and Lawrence J. Faulk.

Appellant San Juan Pools, Inc., was represented by its president, Robert Stark. Keith McGoffin, attorney-at-law, represented the respondent Puget Sound Air Pollution Control Agency (PSAPCA). Lisa Flechtner recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence and
3 contentions of the parties the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant San Juan Pools, Inc., produces fiberglass pools and spas
7 at a site in Snohomish County on the Bothell-Everett Highway.

8 The process involves applying gel coat and polyester resin to
9 molds. These materials are volatile organic compounds (VOC's) which
10 can be the source of vaporous styrene emissions.

11 II

12 Respondent PSAPCA is a municipal corporation with responsibility
13 for a program of air pollution prevention and control in a
14 multi-county area, within which appellant's facility lies.

15 PSAPCA has filed a certified copy of its Regulation I with this
16 Board and we take notice of its contents.

17 III

18 PSAPCA conducts a registration program for air contaminant
19 sources. For any particular facility, this program includes the
20 initial listing of emission sources, contaminants emitted, equipment
21 and control apparatus and other air pollution related information.

22 The registration program also involves on-site inspections to
23 verify or supplement the information provided by the sources.

24 An annual fee is charged to cover the costs of administering the
25 program.

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IV

Some time prior to 1983, appellant sent initial registration forms to PSAPCA, listing certain items, but denying that any equipment it was using was air pollution generating equipment.

PSAPCA nonetheless registered appellant as an air contaminant source. The equipment registered was two spray rooms, two fans, a screen and one chopper, two spray guns. This registration was redesignated simply as "fiberglassing equipment" in 1983.

V

In 1983, 1984 and 1985, PSAPCA each year assessed a registration fee of \$85 against appellant. The annual fee included \$60 as a fixed charge per facility, and an additional \$25 for one item of "air contaminant generating equipment." In each of these years, appellant refused to make payment within the time prescribed and a ten percent penalty of \$8.50 was also assessed.

VI

On November 1, 1985, PSAPCA issued Notice and Order of Civil Penalty No. 6354 to appellant, assessing a civil penalty of \$500 for "failing to complete the registration process by nonpayment of fees" for the years 1983, 1984 and 1985. The notice provided a breakdown of charges and showed a total of \$93.50 owing for each year.

Appellant filed an appeal with this Board on November 27, 1985. The basis of the appeal was the assertion that "San Juan Pools, Inc. does not have any air contaminating equipment at its facility."

VII

At hearing PSAPCA produced an inspection record showing that the facility had been visited by agency inspectors on June 24, 1981, June 23, 1982, June 23, 1983, June 29, 1984, August 21, 1984, and June 14, 1985.

However, the agency offered testimony regarding only one of these inspections - the visit which occurred on August 21, 1984. On that occasion PSAPCA's inspector, after calling in advance, was allowed to enter and observe the premises by one of appellant's employees, who accompanied him on his tour of the facility.

During his visit the inspector observed what he identified as four airless sprayers used, he assumed, in applying gel coat and polyester resin.

On the basis of this observation, PSAPCA continued the registration of the source with the description "air contaminant generating equipment" as the sole listing.

VIII

Appellant's employee gave PSAPCA's inspector a rough estimate of how much gel coat and resin he thought the company used over time. Using this information the inspector mathematically derived an estimate of annual VOC emissions of 3.1 tons. The formula he used, drawn from a technical paper, applied fixed emission values to the amounts of fiberglassing material used by weight.

The inspector did not observe or smell any emissions from appellant's facility. No gel coat or resin was being applied during

1 his visit.

2 IX

3 Appellant's president testified that the method used for applying
4 gel coat and resin at San Juan Pools is to pump it on hydraulically.
5 He contrasted this method with the use of spray equipment which
6 involves atomizing the materials and, in the process, producing some
7 VOC emissions to the air. The hydraulic application method, he said,
8 has been employed by the company since the late seventies and has
9 resulted in approximately a 20% savings in the materials used.

10 He stated that there are no spray booths at the facility. The
11 fiberglassing materials are applied in two enclosed rooms, each about
12 1500 square feet. No special ventilation is provided. No vapor
13 collection system is needed. No stack is installed.

14 X

15 No special measures to deal with the presence of air contaminants
16 in the interior work spaces were shown to be required in the interests
17 of occupational health and safety.

18 XI

19 No evidence was presented to show that PSAPCA's inspector's
20 emission estimate bears any relationship to reality. We were not
21 persuaded that the formula used correctly estimates emissions from a
22 facility using the kind of application process used at San Juan Pools
23 in enclosed interior spaces. Indeed, it was not shown that San Juan
24 Pools produces any actual emissions at all to the outdoor air from the
25 fiberglassing operation, nor that there is a substantial likelihood

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1 that it ever will.

2 XII

3 The vapors from gel coat and polyester resin, if released into the
4 outdoor air, are air contaminants. On the record before us, however,
5 we cannot find that the subject facility emits or is likely to emit
6 more than a de minimis amount of such vapors into the atmosphere.

7 XIII

8 Any Conclusion of Law which is deemed a Finding of Fact is hereby
9 adopted as such.

10 From these Findings, the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 The Board has jurisdiction over the issues and the parties.

14 II

15 The evidence presented by PSAPCA's inspector was not illegally
16 seized.

17 III

18 PSAPCA's Regulation I, Section 5.03 states that

19 All air contaminant sources within the
20 jurisdiction of the agency shall be
21 registered with the agency, except any of the
air contaminant sources which are listed in
Exhibit "A" . . .

22 Exhibit "A" sets forth a list of some 29 specific exclusions. The
23 thirtieth (and final) exclusion is a catch-all, exempting:

24 (30) Sources which due to the amount and
25 nature of air contaminants produced and
26 potential to contribute to air pollution are
determined through review by the Central
Offices not to warrant registration . . .

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1 IV

2 An air contaminant source is a facility "which emits or may emit"
3 into the atmosphere any dust, fumes, mist, smoke, other particulate
4 matter, vapor, gas, odorous substance or any combination thereof.
5 Regulation I, Section 1.07(c), (rr). The definition includes both
6 actual emissions and the potential to emit and there appears to be no
7 lower threshold for inclusion.

8 We conclude that the subject facility fits technically within the
9 definition of air contaminant source. There is at least some
10 potential for emissions from its operation.

11 V

12 However, that potential was not shown to be other than minor and
13 remote. The regulatory scheme expressed in Section 5.03 clearly
14 contemplates a de minimis category comprised of sources so
15 insignificant as "not to warrant registration." Based on the
16 information presented, we hold that San Juan Pools falls into that
17 category and that it was error to require the company to register.

18 VI

19 Accordingly, the fees assessed for registration of San Juan Pools
20 in 1983, 1984 and 1985 were improperly assessed, and the civil penalty
21 of \$500 for non-payment of such fees was likewise unlawful. No
22 violation of the Clean Air Act or of Regulation I occurred.

23 VII

24 We do not decide whether civil penalties may legitimately be used
25 as a collection tool for registration fees.

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VIII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The Notice and Order of Civil Penalty (No. 6354) is reversed.

DONE this 5th day of May, 1986.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Lawyer Member

Lawrence I. Faulk 5/5/86

LAWRENCE I. FAULK, Chairman

Gayle Rothrock

GAYLE ROTHROCK, Vice-Chairman

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